Re SARDAR ALI

[O. C. J. (Murray-Aynsley C.J.) June 24, 1955]

[Singapore — Bankruptcy No. 413 of 1954]

Bankruptcy Ordinance (Cap. 45), s. 24(3) — Adjudication Order — Discretion of Court.

These proceedings arose from a judgment given in Suit No. 740 of 1948 wherein the petitioning creditor who was the plaintiff claimed half share of the loss suffered by him against the bankrupt, the defendant, in respect of the chief tenancy of certain premises in Singapore of which both he and the bankrupt were joint tenants. In the judgment the learned trial Judge directed the Registrar to take an account of all monies collected and spent by both parties to the suit. The plaintiff filed his own account, and in the absence of any surcharge and falsification by the defendant who did not file his account and took no further interest in the further proceedings of the suit, the learned Registrar made his certificate stating that a certain sum was due by the defendant to the plaintiff.

Bankruptcy proceedings followed consequent upon the failure of the defendant to comply with the Bankruptcy Notice based on the certificate issued by the Registrar. At the hearing of the Petition the Court made only a Receiving Order but not an Adjudication Order. After the Receiving Order was made, the defendant applied to Court in Suit No. 740 of 1948 unsuccessfully to set aside the Certificate of the Registrar. The application was refused on the ground that no special circumstances had been shown so as to bring the case within R.S.C. 0.52, r. 68 whereby the Judge could set aside the Certificate after it has become binding.

At the conclusion of the debtor's public examination the Asst. Official Assignee on behalf of the Official Assignee made an informal application to the Court under r. 272(1) of the Bankruptcy Rules, 1897, for an Adjudication Order to be made against the debtor under s. 24(3) of the Bankruptcy Ordinance. The application by the Official Assignee was resisted on the ground that the Court had certain discretion in the matter before making the Adjudication Order. It was contended that even if the Court refused to set aside the Registrar's Certificate, yet the Court, while acting in its Bankruptcy jurisdiction, had ample power and jurisdiction to go behind the judgment or order on which the Bankruptcy Notice and petition were founded and go into the merits of such judgment or order and if satisfied that such judgment or order was obtained by any fraud or falsehood it could in its Bankruptcy jurisdiction set aside or refuse to give any validity or effect to such judgment or order and consequently could refuse to adjudicate a person bankrupt when the petitioning creditor relied on such judgment or order for the purpose of adjudicating him a bankrupt. Counsel for the debtor relied on s. 6(3) of the Bankruptcy Ordinance and on the cases of Ex parte Kibble 10 Ch. D. 373, Ex parte Lennox 16 Q.B.D. 315, Re Fraser (1892) 2 Q.B. 633 where it was held that the Bankruptcy Court could investigate into the validity of the judgment or order in cases of fraud, and could refuse to adjudicate a person bankrupt when the Bankruptcy petition was founded upon such judgment.

Counsel for the petitioning creditor submitted that there was no evidence of fraud before the Court and pointed out that since the Bankruptcy Notice and Bankruptcy Petition were duly served on the debtor he had every opportunity to oppose the petitioning creditor's application for a Receiving Order. The judgment debt due under the above mentioned Suit had not been paid nor had the costs in respect of the suit and in respect of the above application to set aside the Registrar's certificate. Further, if an Adjudication Order was not made then the debtor had nothing to lose and everything to gain since actions could be commenced by him personally and no action could be taken against him.

Held: (1) in making a Receiving Order the Court has a certain power of going behind judgments but this power is anomalous and only to be exercised in exceptional circumstances; (2) where there is an application for adjudication the words of s. 24(3) of the Bankruptcy Ordinance are peremptory; (3) in making an Adjudication Order the discretion which the Court has given itself should not be extended, and is limited to granting an adjournment for further negotiation with a view to a composition; (4) in the circumstances of the case there must be an Adjudication Order.

BANKRUPTCY MOTION.

Tan Peng Khoo for the petitioning creditor.

A. N. Mitra for the judgment debtor.

A. W. Ghows, Asst. Official Assignee, in person.

Cur. Adv. Vult.

Murray-Aynsley C.J. : — A Receiving Order has been made against the debtor. There is now an application to adjudge him bankrupt. This is opposed on grounds which attack the judgment which was the debt on which the Bankruptcy Petition was based. Section 24(3) lays down the procedure. The sub-section simply says when certain conditions are fulfilled the Court "shall adjudge the debtor bankrupt."

When it is a question of making a Receiving Order it is clear that the Courts has a certain power of going behind judgments. This power is anomalous and only to be exercised in exceptional circumstances. This is, of course, entirely different from the power of the Official Assignee to go behind judgments in the interests of competing creditors. Where there is an application for adjudication the words of the section are peremptory. Decided cases have given the Court some discretion. How they could be justified originally I do not know. But the section has been re-enacted subsequently and they must now be taken to be correct. But it seems to me that the discretion which the Courts have given themselves should not be extended. It seems that that discretion is limited to granting an adjournment for further negotiation with a view to a composition.

In the circumstances there must be an Adjudication Order.

Adjudication Order made.

Solicitors : *Oehlers & Choa; S. C. Goho & Co.*